



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,302	10/17/2001	Keith D. McBrayer	MCBCP0101USA	7849

7590 12/09/2002

Donald L. Otto  
Renner, Otto, Boisselle & Sklar, LLP  
19th Floor  
1621 Euclid Avenue  
Cleveland, OH 44115-2191

EXAMINER
----------

COHEN, AMY R

ART UNIT	PAPER NUMBER
----------	--------------

2859

DATE MAILED: 12/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/982,302

Applicant(s)

MCBRAYER, KEITH D.

Examiner

Amy R Cohen

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 2859

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 3, 5-10, 19-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Premo (U. S. Patent No. 2,579,857).

Premo teaches a combination layout tool (10) comprising a triangular shaped member (Fig. 1) having three side edges (11, 12, 13) that intersect at opposite ends to form three angle corners, one of said side edges (11) extending between two of said corners having a notch (30) along the length of said one side edge that is closer to one of said two corners than the other of said two corners, and a plurality of incremental angle slots (31) in said member adjacent the side edge of said member opposite said one corner in radial alignment (27) with said notch in said one side.

Premo teaches the tool wherein one of the tree corners is a 45° corner (Col 2, lines 39-53).

Premo teaches the tool wherein one of said incremental slots is a 90° angle slot that extends perpendicular to said one side edge in alignment with said notch (Fig. 1).

Premo teaches the tool wherein said incremental angle slots are spaced 5° apart (Fig. 1).

Premo teaches the tool comprising at least one additional angle slot between said 5° angle slots (Fig. 1).

Art Unit: 2859

Premo teaches the tool wherein an additional angle slot is at  $22\frac{1}{2}^{\circ}$  as measured from said notch in a direction away from said one side edge (Fig. 1).

Premo teaches the tool wherein an additional angle slot is at  $67\frac{1}{2}^{\circ}$  as measured from said notch in a direction away from said one side edge (Fig. 1).

Premo teaches the tool comprising a triangular shaped slot (35) in said member in close proximity to said notch (Fig. 1) for latching one end of a string through said triangular shaped slot that has been pulled over said notch and one of said angle slots.

Premo teaches the tool comprising a pivot point receiving hole (26) in said member adjacent one of said corners and a plurality of incrementally spaced marker receiving holes (26) in said member in incremental spaced relation from said pivot point hole for drawing different diameter circles by rotating said tool about a pivot point extending through said pivot point hole using a marker extending through one of said marker receiving holes.

Premo teaches the tool wherein said pivot point receiving hole and said marker receiving holes are in a common plane in a parallel spaced relation to said one side edge (Fig. 1).

Premo teaches the tool comprising a plurality of spaced apart parallel stud layout slots (26) in said member extending in a direction perpendicular to said one side edge (Fig. 1).

Premo teaches the tool wherein one of said stud layout slots is in alignment with said notch (Fig. 1).

Premo teaches the tool wherein there are two additional stud layout slots located on opposite sides of said one stud layout slot (Fig. 1).

Art Unit: 2859

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Premo in view of Palitto (U. S. Patent No. 2,593,914) in view of Roads (U. S. Patent No. 1,315,333).

Premo discloses the combination layout tool as described above in paragraph 2.

Premo does not disclose a combination layout tool comprising two  $67\frac{1}{2}^{\circ}$  angle corners and having a height in excess of 20 inches wherein said height is approximately 24 inches.

Palitto discloses a combination layout tool comprising a triangularly shaped member having three side edges (12, 16, 9) that intersect at opposite ends to form two  $67\frac{1}{2}^{\circ}$  angle corners and one  $45^{\circ}$  angle corner.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tool of Premo to include two  $67\frac{1}{2}^{\circ}$  angle corners, as taught by Palitto, so that a  $67\frac{1}{2}^{\circ}$  angle, a common angle in drafting, could be drawn without adjustment of tool.

Roads discloses a tool wherein the perpendicular height is approximately 24 inches (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tool of Premo in view of Palitto to be of approximately

Art Unit: 2859

24 inches, as taught by Roads, so that the tool would be of an appropriate length for draftsman and so that there would be space to include other scales/guides (Roads Col 1, lines 12-39).

5. Claims 11, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Premo in view of Castleton (U. S. Patent No. 4,598,482).

Premo discloses the tool as described above in paragraph 2.

Premo does not disclose a tool comprising at least two rafter tail/ridge cut patterns in one side edge in a spaced relation from one another and from said notch, wherein one of said patterns is a 6 and 12 pitch pattern, and wherein each of said patterns consists of two straight sides intersecting said one side edge and intersecting another at a 90° angle.

Castleton discloses a tool (70) comprising a triangular shaped member (70), at least two rafter tail/ridge cut patterns (34, 48) in one side edge in a spaced relation from one another, wherein one of said patterns is a 6 and 12 pitch pattern (34), wherein each of said patterns consists of two straight sides intersecting said one side edge and intersecting another at a 90° angle (Fig. 2a), one of said sides of each pattern being shorter than the other side (Fig. 2a) and angled slots (32, 46) in said member in alignment with the respective shorter side of each of said patterns.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tool of Premo to include rafter tail/ridge cut patterns in one side edge of the tool, as taught by Castleton, so that a draftsman could layout a design for a roof with a 6 and 12 pitch.

6. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Premo in view of Roads (U. S. Patent No. 1,315,333).

Art Unit: 2859

Premo discloses the tool as described above in paragraph 2.

Premo does not disclose a tool wherein there are at least two rafter tail/ridge cut patterns in one side edge in spaced relation from one another and from said notch and wherein one of said patterns is a 4 and 12 pitch pattern.

Roads discloses a tool comprising a triangular shaped member (Fig. 1) having three side edges (10, 11, 12) that intersect at opposite ends to form three angle corners wherein there are at least two rafter tail/ridge cut patterns (18) in one side edge in spaced relation from one another and wherein one of said patterns is a 4 and 12 pitch pattern (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tool of Premo to include at least two rafter tail/ridge cut patterns wherein one of said patterns is a 4 and 12 pitch pattern, as taught by Roads, to provide a single tool with multiple uses as already disclosed by Roads (Col 1, lines 9-39).

7. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Premo in view of Musham (U. S. Patent No. 2,039,333).

Premo discloses the tool as described above in paragraph 2.

Premo does not disclose a tool comprising tread and riser slots wherein said tread and riser slots having inner ends terminating in closely spaced relation from one another, wherein the tread slot has a length of 10 inches and the riser slot has a length of 7 inches and comprising a hole in the same plane in which the out ends of said tread and riser slots terminate and being spaced from said outer end a distance corresponding to the distance between the out ends.

Art Unit: 2859

Musham discloses a tool (1) comprising a notch (3) and a plurality of incremental angle slots (7, 12, 13) and comprising tread and riser slots (19, Fig. 1) wherein said tread and riser slots having inner ends terminating in closely spaced relation from one another, said tread and riser slots having inner ends terminating in a closely spaced relation from one another, and outer ends terminating in a plane parallel to one side edge (Fig. 1), and a hole (24) in the member in the same plane in which the outer ends of said tread and riser slots terminate, said hole being spaced from said outer end of said riser slot a distance corresponding to the distance between the outer ends of said tread and riser slots (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tool of Premo to include tread and riser slots and a hole, as taught by Musham, in order to include a coordinate measuring system into the tool (Musham, Col 2, lines 28-42).

Regarding the length of the tread and riser slots: Musham discloses a tool where the length of each of the slots is close to 10 inches (Fig. 1). However, to choose a length of 10 inches for the tread slot and 7 inches for the riser slot, absent any criticality, is only considered to be the "optimum" value of the length of each of the slots, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

8. Claims 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Premo.

Premo discloses the tool as described above in paragraph 2.



Art Unit: 2859

Premo does not disclose a tool wherein a stud layout slot is spaced 16 inches from said one stud layout slot and wherein the other stud layout slot is spaced 8 inches from another side of said one stud layout.

Regarding the distances between stud layout slots: Premo discloses a tool where the stud layout slots are spaced apart. However, to choose a 16 inch distance on one side of the first stud layout slot and 8 inches on the other side of the first layout slot, absent any criticality, is only considered to be the "optimum" value of the distanced between stud layout slots, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following application and patents disclose combination layout tools Tomiser, Jr. et al. (PG Pub US2002/0133961), English (U. S. Patent No. 6,314,652), Cunningham (U. S. Patent No. 5,090,129), Blum (U. S. Patent No. 4,490,916), Corsette (U. S. Patent No. 4,345,383), Absher (U. S. Patent No. 2,589,525), Smithson (U. S. Patent No. 2,556,781), Escalante (U. S. Patent No. 2,016,489), and Griffiths (U. S. Patent No. 364,508).


Art Unit: 2859

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R Cohen whose telephone number is (703) 305-4972. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3431.

ARC  
December 6, 2002

  
Diego Gutierrez  
Supervisory Examiner  
Tech Center 2800